



PATENT APPLICATION

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Jean-Luc TAUREL et al.

Group Art Unit: 3753

Application No.: 09/843,809

Examiner: A. Chambers

Filed: April 30, 2001

Docket No.: 109419

For: A FUEL TANK AND A METHOD OF MANUFACTURING IT

REQUEST FOR RECONSIDERATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the October 17, 2003 Office Action, the period for reply being extended to February 17, 2004 by the attached Petition for Extension of Time, reconsideration of the rejection is respectfully requested in light of the following remarks.

Claims 1-6 and 9-31 are pending.

The Office Action makes final the Restriction Requirement set forth in the March 26, 2003 Office Action (paper No. 10). Applicants continue to respectfully traverse the Restriction Requirement.

Applicants would like to point out that claim 31 recites a fuel tank rather than a method of manufacturing a fuel tank. Claim 31 clearly recites "a fuel tank comprising." MPEP §§ 2113 and 2173.05(p) permit an applicant to claim a product by reciting one or more process steps. Therefore, claim 31 is not a method claim. Claim 31 should be included with elected Group I. As a result, Applicants respectfully request that claim 31 be considered with claims 1-26.

Furthermore, with respect to claims 27-30, Applicants continue to assert that the Patent Office has not met its burden under MPEP §806.05(f). The Patent Office has failed to show that inventions I and II are distinct. Particularly, the Patent Office has failed to provide an alternative method for assembling the fuel tank of claims 1-26. The method proposed by the March 26, 2003 Restriction Requirement, i.e., assembling a fuel tank with a fastener other than a snap-fastener is not distinct from the method claimed in claims 27-30. On the contrary, the alternative method proposed by the March 13, 2003 Restriction Requirement is clearly within the scope of the method recited in claim 27.

The March 26, 2003 Restriction Requirement alleges that the fuel tank of claim 1 could be assembled by a feature other than "snap fastening." However, the method of claims 27-30 is not limited to "snap-fastening" or any type of fastening. The method of claims 27-30 merely recites "assembling the tank portions." Therefore, the alleged step of assembly by a method other than snap-fastening is clearly encompassed by the claimed step of "assembling the tank portions." As a result, the proposed alternative method of the March 26 Restriction Requirement is not materially different from the method for manufacturing a fuel tank of claims 27-30.

As the Examiner has failed to suggest a process materially different than that of claims 27-31 for assembling the device of claims 1-26, the Restriction Requirement must be withdrawn (MPEP §806.05(f)).¹

The Office rejects claims 1-6 and 9-26 under 35 U.S.C. §102(e) over U.S. Patent 6,216,734 to Umetsu et al. (hereinafter "Umetsu"). The rejection is respectfully traversed.

When an Office Action maintains a previous rejection, MPEP §707.07(f) requires the Office Action to take note of an applicant's traversal of a rejection and answer the substance

¹ "If applicant convincingly traverses the requirement, the burden shifts to the examiner to document a viable alternative process or product, or withdraw the requirement."

of it. Although the present Office Action maintains the §102(e) rejection over Umetsu, it fails in any way to answer the substance of Applicants' previous traversal (contained in Applicants' September 8, 2003 Amendment). Therefore, the present Office Action has not provided Applicants with proper consideration of their previous traversal as required by MPEP §707.07(f). Applicants respectfully request that the finality of the present rejection be withdrawn and proper consideration be given to the Applicants' previous traversal. For the convenience of the Patent Office, Applicants' previous grounds of traversal are incorporated below.

Umetsu does not disclose a fuel tank comprising an exterior shell formed by at least two tank portions assembled together, as recited in claim 1. Initially, it should be noted that Umetsu only describes a substructure (subtank 2) for insulation within a fuel tank (col. 2, lines 27-34). As such, Umetsu fails to disclose the particular features of a fuel tank. Furthermore, even if subtank 2 could be considered a fuel tank, Umetsu does not disclose how the subtank 2 is formed or assembled. As a result, Umetsu fails to disclose a fuel tank that is formed by at least two tank portions assembled together, as recited in claim 1.

Furthermore, Umetsu does not disclose a fuel pump that is located entirely within the shell of the fuel tank, as recited in claim 1. It is clear from Figure 1 in Umetsu and the related disclosure that at least part of the fuel pump 1 extends above parallel sidewalls 21 and 22 of the subtank 2. Therefore, a portion of the fuel pump 1 is located outside the shell of the subtank. As a result, Umetsu fails to disclose a fuel pump that is located entirely within the shell of the fuel tank.

Still further, the present rejection fails to address each element of rejected claim 1. 37 C.F.R. 1.104(c)(2) requires that the particular part of a reference relied on for a rejection must be designated as clearly as practicable. The Office Action fails to specifically allege that Umetsu discloses a fuel pump that is located entirely within the shell of the fuel tank, as

recited in claim 1. The Office Action further fails to designate any portion of Umetsu that might be relied on to support such an allegation. Therefore, the rejection violates 37 C.F.R. 1.104(c)(2). As a result, the rejection is improper and must be withdrawn.

Because the rejection of claims 1-6 and 9-26 is improper under both MPEP §707.07(f) and 37 C.F.R. 1.104(c)(2), and Umetsu does not disclose all of the features of claim 1, claim 1 and claims 2-6 and 9-26, depending from claim 1, are patentable over Umetsu. Applicants respectfully request that the rejection of claims 1-6 and 9-25 be withdrawn.

The Office Action rejects claims 1-6 and 9-26 under 35 U.S.C. §102(b) over U.S. Patent 5,186,200 to Kimura et al. (hereinafter "Kimura"). The rejection is respectfully traversed.

Again, the present Office Action has not provided Applicants with proper consideration of their previous traversal of the present rejection (contained in Applicants' September 8, 2003 Amendment) under MPEP §707.07(f). Applicants respectfully request that the finality of the present rejection be withdrawn and proper consideration be given to the Applicants' previous traversal. For the convenience of the Patent Office, Applicants' previous grounds of traversal are incorporated below.

Kimura does not disclose a fuel tank at all. Rather, Kimura discloses "a rotary tank system to be provided inside a fuel tank for vehicles" (Abstract, emphasis added). It is well known in the art that a rotary tank system, while using the word "tank," is not a fuel tank, as the term is used with respect to the claimed invention, but rather a device that assures suctioning of the fuel by a pipe even when the surface level of the fuel inside a fuel tank is slanted due to centrifugal force (col. 1, line 5-30). Kimura does not disclose any of the features of the fuel tank within which the disclosed rotary tank is provided.

Furthermore, assuming that the device of Kimura could be considered a fuel tank, Kimura does not disclose a compartment integrally molded with a bottom wall of one of said portions and a fuel pump located entirely within the shell and fixed into the compartment, as recited in claim 1. It is clear from the disclosure of Kimura that the fuel pump 51 is contained partially within pump bracket 3 (Figs 1, 2, and 7; column 4, lines 9-15). Therefore, for the purposes of Applicants' claim 1, the pump bracket 3 must be the alleged equivalent of the recited "compartment." Still further, Applicants' recited "tank portions" must be the alleged equivalent of the rotary tank portions 4, 5 in Kimura because the rotary tank is the only tank disclosed in Kimura and, even if the pump bracket 3 could somehow be considered a tank, the pump 51 is not fixed into any integrally molded compartment of the pump brackets. Because the pump bracket 3 (compartment) is not "integrally molded with a bottom wall of one of the rotary tank portions 4, 5 (tank portions), Kimura cannot disclose all of the features of claim 1.

Still further, the present rejection fails to address each element of rejected claim 1. As discussed above, 37 C.F.R. 1.104(c)(2) requires that the particular part of a reference relied on for a rejection must be designated as clearly as practicable. The Office Action fails to allege that Kimura discloses a fuel pump that is located entirely within the shell of the fuel tank, as recited in claim 1. The Office Action further fails to designate any portion of Kimura that might be relied on to support such an allegation. Therefore, the rejection violates 37 C.F.R. 1.104(c)(2). As a result, the rejection is improper and must be withdrawn.

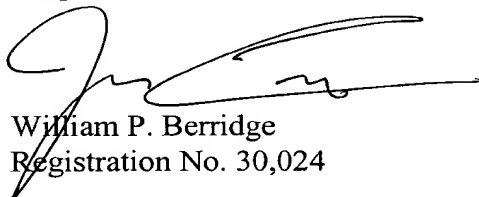
Kimura does not disclose a fuel pump that is located entirely within the shell of the fuel tank, as recited in claim 1. It is clear from Figures 1, 2, and 7 that at least a portion of the fuel pump 51, disclosed by Kimura, extends outside and beyond flange 38. As such, fuel pump 51 is not entirely within pump bracket 3 or the rotary tank system 1. Therefore, Kimura cannot disclose a fuel pump that is located entirely within the shell of the fuel tank, as recited in claim 1. Claim 1 is patentable over Kimura.

Because the rejection of claims 1-6 and 9-26 is improper under both MPEP §707.07(f) and 37 C.F.R. 1.104(c)(2), and Kimura does not disclose all of the features of claim 1, claim 1 and claims 2-6 and 9-26, depending on claim 1, are patentable over Kimura. Applicants respectfully request that the rejection of claims 1-6 and 9-25 be withdrawn.

In view of the foregoing, Applicants respectfully submit that this application is in condition for allowance. Applicants earnestly solicit favorable reconsideration and prompt allowance of claims 1-6 and 9-31.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, Applicants invite the Examiner to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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WPB:JOC/tea

Date: February 17, 2004

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